


FILED
OCT 13 2017

CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION**

TERRI BRUCE,

Plaintiff,

v.

STATE OF SOUTH DAKOTA and LAURIE GILL,
in her official capacity as Commissioner of the South
Dakota Bureau of Human Resources,

Defendants.

Case No. 17- 5080

COMPLAINT

1. The State of South Dakota provides healthcare coverage to State employees through the South Dakota State Employee Health Plan ("SDSEHP" or the "Plan"). Under the Plan, all State employees are "entitled to Medically Necessary services and supplies, if provided by or under the direction of a Physician." The Plan defines "Medically Necessary" as "Health care services or supplies needed to prevent, diagnose or treat an illness, injury, condition, disease or its symptoms and that meet accepted standards of medicine."

2. Despite the broad healthcare coverage provided to every other employee, the Plan singles out transgender employees for unequal treatment by categorically depriving them of all medical care for gender dysphoria, regardless of whether those treatments are medically necessary under accepted standards of care.

3. Plaintiff Terri Bruce is a man who is transgender. He has worked at the South Dakota State Historical Society Archaeological Research Center as a temporary employee since 2005 and a permanent employee since 2010.

4. As a result of the Plan's discriminatory exclusion, Mr. Bruce has been blocked from receiving medically necessary chest reconstruction surgery prescribed by his physician in accordance with the widely accepted standards of care for treating gender dysphoria. According to the Plan administrator, "while [the surgery] may be medically necessary" the Plan "specifically excludes coverage for Services (sic) or drugs related to gender transformations."

5. As a result of the Plan's discriminatory exclusion, Mr. Bruce has been forced to pay out of pocket for medically necessary hormone therapy prescribed by his physician in accordance with the widely accepted standards of care for treating gender dysphoria.

6. The SDSEHP provides coverage for the same types of chest reconstruction surgery and hormones when prescribed as medically necessary treatment for other medical conditions. But the Plan categorically excludes coverage for these same treatments when they are medically necessary to treat gender dysphoria.

7. The Plan's discriminatory exclusion subjects Mr. Bruce—as an employee who is transgender—to unequal treatment and denies him a valuable employee benefit that is provided to every other State employee.

8. There is no legitimate medical justification for the Plan's discriminatory exclusion. In the past, some public and private insurance companies excluded coverage for treatment of gender dysphoria (or "transition-related care") based on the erroneous assumption that such treatments were cosmetic or experimental. Today, however, every major medical organization recognizes that such exclusions have no basis in medical science and that transition-related care is effective, safe, and medically necessary for treatment of gender dysphoria.

9. The Plan's discriminatory exclusion lacks any rational basis and is grounded in sex stereotypes, discomfort with gender nonconformity, and moral disapproval of people who are transgender.

10. On its face and as applied to Mr. Bruce, the Plan discriminates against employees because of sex in violation of the Title VII of the Civil Rights Act of 1964 and deprives transgender employees of equal treatment under the Equal Protection Clause of the Fourteenth Amendment. Mr. Bruce brings this Complaint for declaratory and injunctive relief.

JURISDICTION

11. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* ("Title VII"), the Constitution of the United States, and 42 U.S.C. § 1983.

12. This Court has jurisdiction pursuant to Article III of the United States Constitution; 28 U.S.C. §§ 1331, 1343; and 42 U.S.C. § 2000e-5(f)(3).

13. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

PARTIES

14. Plaintiff Terri Bruce resides in the Western Division of the District of South Dakota.

15. Mr. Bruce is a South Dakota State employee working at the South Dakota State Historical Society Archaeological Research Center in Rapid City, South Dakota

16. Defendant Laurie Gill is sued in her official capacity as Commissioner of the South Dakota Bureau of Human Resources located in Pierre, South Dakota. The Bureau of Human Resources is the State agency responsible for designing and administering the SDSEHP, including the administration and payment of claims.

VENUE

17. Venue lies with this Court pursuant to 42 U.S.C. § 2000e-5(f)(3) because the unlawful employment practice was committed at Mr. Bruce's place of employment in this District, in Rapid City, South Dakota.

18. Venue also lies with this Court pursuant to 28 U.S.C. 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District, in Rapid City, South Dakota.

EXHAUSTION OF ADMINISTRATIVE REQUIREMENTS

19. On June 30, 2016, Plaintiff timely filed a charge with the Equal Employment Opportunity Commission against the State of South Dakota for sex discrimination in violation of Title VII.

20. On June 21, 2017, the EEOC issued a determination finding reasonable cause to believe that South Dakota discriminates against Mr. Bruce on the basis of sex in violation of Title VII. (Exhibit A.)

21. On July 17, 2017, the EEOC issued a right-to-sue letter to Plaintiff. (Exhibit B.)

FACTUAL ALLEGATIONS

Transgender individuals and gender dysphoria

22. "Gender identity" is a well-established medical concept, referring to one's sense of oneself as belonging to a particular gender. Typically, people who are designated female at birth based on their external anatomy identify as girls or women, and people who are designated male at birth identify as boys or men. For transgender individuals, however, the sense of one's self—one's gender identity—differs from the sex assigned to them at birth.

23. Transgender men are men who were assigned “female” at birth, but have a male gender identity. Transgender women are women who were assigned “male” at birth, but have a female gender identity.

24. Experts agree that gender identity has a biological component, meaning that each person’s gender identity (transgender and non-transgender individuals alike) is the result of biological factors, and not just social, cultural, and behavioral ones.

25. Regardless of the precise origins of a person’s gender identity, there is a medical consensus that gender identity is deep-seated, set early in life, and impervious to external influences.

26. Gender dysphoria is the diagnostic term for the clinically significant emotional distress experienced as a result of the incongruence of one’s gender with their assigned sex and the physiological developments associated with that sex.

27. Gender dysphoria is a serious medical condition codified in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) and International Classification of Diseases (ICD-10). The criteria for diagnosing gender dysphoria are set forth in the DSM-V (302.85).

28. The widely accepted standards of care for treating gender dysphoria are published by the World Professional Association for Transgender Health (“WPATH”). The WPATH Standards of Care have been recognized as the authoritative standards of care by the leading medical organizations, including the American Medical Association, the American Psychological Association, and the American Academy of Pediatrics.

29. Under the WPATH standards, medically necessary treatment for gender dysphoria may require medical steps to affirm one’s gender identity and transition from living as one gender to another. This treatment, often referred to as transition-related care, may include

hormone therapy, surgery (sometimes called “sex reassignment surgery” or “gender confirmation surgery”), and other medical services that align individuals’ bodies with their gender identities.

The exact medical treatment varies based on the individualized needs of the person.

30. According to every major medical organization and the overwhelming consensus among medical experts, the protocol for treating gender dysphoria, including surgical procedures, are effective, safe, and medically necessary when clinically indicated to alleviate gender dysphoria.

31. In the past, public and private insurance companies excluded coverage for transition-related care based on the erroneous assumption that such treatments were cosmetic or experimental. Today, however, the medical consensus is that exclusions of transition-related healthcare have no basis in medical science.

32. For example, in 2008 the American Medical Association (“AMA”) passed Resolution 122 recognizing gender dysphoria (then known as Gender Identity Disorder, or GID) as a “serious medical condition” which, “if left untreated, can result in clinically significant psychological distress, dysfunction, debilitating depression and, for some people without access to appropriate medical care and treatment, suicidality and death.” AMA, Resolution 122, *Removing Financial Barriers to Care for Transgender Patients* (June 16, 2008). The AMA emphatically asserts that “[h]ealth experts in GID, including [WPATH], have rejected the myth that such treatments are ‘cosmetic’ or ‘experimental’ and have recognized that these treatments can provide safe and effective treatment for a serious health condition.” *Id.*

33. In Resolution 122, the AMA also opposes categorical exclusions of coverage for treatment of gender dysphoria when prescribed by a physician, noting that “many of these same treatments ... are often covered for other medical conditions” and that “the denial of these

otherwise covered benefits for patients suffering from GID represents discrimination based solely on a patient's gender identity." *Id.*

34. The American Psychiatric Association, the American Psychological Association, and the Endocrine Society have all issued similar resolutions.

35. Applying contemporary standards of care, Medicare, state Medicaid programs, and private insurers routinely cover transition-related surgery as medically necessary treatment for gender dysphoria.

SDSEHP and its exclusion of coverage for "gender transformation"

36. Mr. Bruce's healthcare coverage is provided and paid for by the State of South Dakota through the South Dakota State Employee Health Plan.

37. The Bureau of Human Resources is the State agency responsible for designing and administering the Plan, including the administration and payment of claims.

38. The managed care review company contracted to review claims under SDSEHP is Health Management Partners.

39. In general, the Plan states that "[m]embers shall be entitled to Medically Necessary services and supplies, if provided by or under the direction of a Physician." The Plan defines "Medically Necessary" as "Health care services or supplies needed to prevent, diagnose or treat an illness, injury, condition, disease or its symptoms and that meet accepted standards of medicine."

40. Despite this general provision, the Plan categorically excludes all "[s]ervices or drugs related to gender transformations" regardless of medical necessity.

Mr. Bruce's medically necessary treatment for gender dysphoria

41. Terri Bruce has worked at the South Dakota State Historical Society Archaeological Research Center since 2008.

42. Mr. Bruce is a man who is transgender. Since 2012, he has been identified as a male on insurance forms. On October 15, 2015, his passport was changed to identify him as male. On December 3, 2015, a South Dakota state court issued an order declaring that his gender is male and directing the South Dakota State Register to issue him a birth certificate reflecting that he is male.

43. Since 2011, Mr. Bruce has been receiving hormone therapy prescribed by his physician as part of his medically necessary treatment for gender dysphoria in accordance with the WPATH Standards of Care. Because of SDSEHP's categorical exclusion of services related to gender transformation, he has been paying for the necessary hormones out of pocket at a cost of approximately \$120 - \$200 per year.

44. On May 3, 2016, Mr. Bruce visited Dr. Mary Snyder of Black Hills Plastic Surgery, to whom he was referred by his primary care physician, and a mastectomy gynecomastia was scheduled for June 22, 2016 as part of his medically necessary treatment for gender dysphoria.

45. On May 9, 2016, HMP denied preauthorization, stating that "while it may be medically necessary" [the employee health plan] "specifically excludes coverage for Services (sic) or drugs related to gender transformations." May 9, 2016 Denial Letter (attached as Exhibit D).

46. After Mr. Bruce filed a first-level appeal, the State of South Dakota [Employee Benefits Program] upheld the denial because of the categorical exclusion in the state health plan

for “[s]ervices or drugs related to gender transformations.” May 26, 2016 Letter (attached as Exhibit D).

47. At one point during the process of seeking coverage for his mastectomy gynecomastia Mr. Bruce spoke to Deb [last name unknown] from Health Management Partners. She told him that if he had been assigned male at birth and were experiencing clinically significant psychological distress from the size of his breasts, the Plan would cover the mastectomy gynecomastia as medically necessary. But because he is a man who is transgender, the procedure is excluded from coverage regardless of how medically necessary it is.

LEGAL CLAIMS

COUNT I (Against South Dakota)

VIOLATION OF TITLE VII

48. Title VII of the Civil Rights Act of 1964 provides that employers may not “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex.” 42 U.S.C. § 2000e-2(a)(1).

49. The State of South Dakota is an employer as that term is defined in Title VII, 42 U.S.C. § 2000e-(a) and (b).

50. An employer-sponsored health plan is part of the “compensation, terms, conditions, or privileges of employment.” 42 U.S.C. § 2000e-2(a)(1).

51. Discrimination on the basis of transgender status or gender nonconformity is discrimination on the basis of “sex” under Title VII.

52. By categorically excluding coverage for all medically necessary “transgender services” or services related to “gender transformation,” the State of South Dakota has drawn a classification that discriminates based on transgender status and gender nonconformity.

53. As a result of the exclusion in the Plan, non-transgender employees receive coverage for all their medically necessary healthcare, but transgender employees do not.

54. Because medical transition from one sex to another inherently violates gender stereotypes, denying medically necessary coverage for such healthcare constitutes impermissible discrimination based on gender nonconformity.

55. The State of South Dakota's exclusion of medically necessary care for gender dysphoria is not based on standards of medical care; it is based on moral disapproval of, and discomfort with, transgender people and gender transition.

56. By excluding all healthcare related to "gender transformation" from the only available health plan it provides to employees, the State of South Dakota has unlawfully discriminated—and continues to unlawfully discriminate—on the basis of sex in violation of Title VII.

COUNT II
(Against Defendant Gill in her official capacity))

VIOLATION OF THE EQUAL PROTECTION CLAUSE

57. Plaintiff re-alleges and incorporates by reference as if fully set forth herein the allegations in all preceding paragraphs.

58. At all relevant times, Defendants have acted under color of state law.

59. The Equal Protection Clause of the Fourteenth Amendment provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." State employees are protected by the Equal Protection Clause.

60. By categorically excluding all medically necessary "transgender services" or services related to "gender transformation" the State of South Dakota has unlawfully

discriminated—and continues to unlawfully discriminate—against Mr. Bruce on the basis of gender, which is subject to heightened scrutiny under the Equal Protection Clause.

61. By excluding all healthcare related to “gender transformation” from the only available health plan it provides to employees, the State of South Dakota has unlawfully discriminated—and continues to unlawfully discriminate—on the basis of transgender status, which is independently subject to heightened scrutiny under the Equal Protection Clause.

- a. Men and women who are transgender, as a class, have historically been subject to discrimination.
- b. Men and women who are transgender, as a class, have a defining characteristic that frequently bears no relation to an ability to perform or contribute to society.
- c. Men and women who are transgender, as a class, exhibit immutable or distinguishing characteristics that define them as a discrete group.
- d. Men and women who are transgender, as a class, are a minority with relatively little political power.

62. The Plan’s discriminatory exclusion is not narrowly tailored to serve a compelling governmental interest.

63. The Plan’s discriminatory exclusion is not substantially related to an important governmental interest.

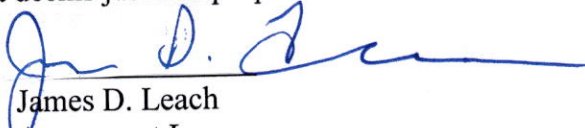
64. The Plan’s discriminatory exclusion lacks any rational basis and is grounded in sex stereotypes, discomfort with gender nonconformity, and moral disapproval of people who are transgender.

RELIEF REQUESTED

For the foregoing reasons, Plaintiff respectfully requests that the Court grant the following relief:

- A. Declaratory relief, including but not limited to a declaration that Defendant State of South Dakota violated Title VII and Defendant Gill, in her official capacity, violated the Equal Protection Clause;
- B. Injunctive relief with respect to both Defendants;
- C. Compensatory, consequential, and punitive damages with respect to Defendant South Dakota in an amount to be determined at trial for violation of Title VII;
- D. Pre-judgment and post-judgment interest;
- E. Plaintiff's reasonable costs and attorneys' fees pursuant to Title VII and 42 U.S.C. § 1988; and
- F. Such other relief as the Court deems just and proper.

Dated: October 13, 2017


James D. Leach
Attorney at Law
1617 Sheridan Lake Rd.
Rapid City, SD 57702
Phone: (605) 341-4400
jim@southdakotajustice.com

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Leslie Cooper
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, New York 10004
Phone: (212) 549-2500
jblock@aclu.org
lcooper@aclu.org
Pro hac vice applications to be submitted

Courtney Bowie
American Civil Liberties Union

of South Dakota
P.O. Box 1170
Sioux Falls, SD 57101
Tel.: 201-284-9500
e-mail: cbowie@aclu.org
Pro hac vice application to be submitted



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Minneapolis Area Office

330 Second Ave South
Suite 720
Minneapolis, MN 55401
(612) 335-4040
FAX (612) 335-4044

Charge Number: 444-2016-01249

T K Bruce
101 3rd Street
P.O. Box 355
Hermosa, SD 57744

Charging Party

vs.

State of South Dakota
500 East Capitol Ave., Capital Building
Pierre, SD 57501

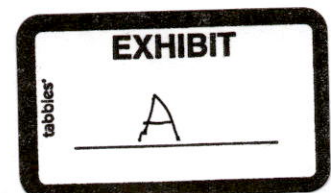
Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue the following determination on the merits of this charge under Title VII of the Civil Rights Act of 1964, as amended (Title VII).

The Respondent is an employer within the meaning of Title VII and all requirements for coverage have been met. The Charging Party, a transgender male, alleged that he was discriminated against based on sex (transgender status/gender identity) in violation of Title VII when he was denied medically necessary care that would be covered by his employer-provided health benefit plan if not for his transgender status.

I conclude that there is reasonable cause to believe that the Respondent discriminated against the Charging Party on the basis of sex (transgender status/gender identity) by denying him medical benefit coverage for treatment due to his sex (transgender status/gender identity). Respondent provides health care coverage through The South Dakota State Employee Health Plan which is administered by the Commissioner of the Bureau of Human Resources of the State of South Dakota. Evidence obtained during the course of the investigation establishes reasonable cause to believe that The South Dakota State Employee Health Plan at the time of Charging Party's charge filing and continuing through the present by its terms categorically excludes coverage of any "service or drugs related to gender transformation," denying Charging Party medically necessary care that would have been covered if not for his transgender status. As such, Respondent's policy discriminated against the Charging Party based on sex (transgender



status/gender identity), as well as against transgendered individuals as a class, in violation of Title VII.

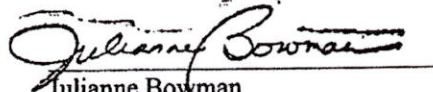
This determination is final. When the Commission finds that violations have occurred, it attempts to eliminate unlawful practices by informal methods of conciliation. Therefore, I invite the parties to join with the Commission in reaching a just resolution to this matter. Disclosure of information obtained by the Commission during the conciliation process will be made only in accordance with the Commission's Procedural Regulations (29 CFR Part 1601.26).

If the Respondent wishes to accept this invitation to participate in conciliation efforts, it may do so at this time by proposing terms for a conciliation agreement; that proposal should be provided to the Commission representative within 14 days of the date of this determination. The remedies may include, as appropriate, an agreement by the Respondent not to engage in unlawful employment practices, placement of identified victims in positions they would have held but for discriminatory actions, back pay, restoration of lost benefits, injunctive relief, compensatory and/or punitive damages, and notice to employees of the violation and the resolution of the claim.

Should the Respondent have further questions regarding the conciliation process or the conciliation terms it would like to propose, we encourage it to contact the assigned Commission representative, Denae Schuldt, at 612-334-4007 or at denae.schuldt@eeoc.gov. Should there be no response from the Respondent in fourteen (14) days, we may conclude that further conciliation efforts would be futile or nonproductive.

On behalf of the Commission,

6/21/17
Date


Julianne Bowman
District Director

cc: Respondent's Representative:
Jennifer Suich Frank
Lynn, Jackson, Schultz & Lebrun, P.C.
909 St. Joseph Street, Suite 800
P.O. Box 8250
Rapid City, SD 57709

Charging Party's Representative:
Courtney A. Bowie
Legal Director
American Civil Liberties Union of
South Dakota
P.O. Box 1170
Sioux Falls, SD 57101

EEOC Form 161-A (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE
(CONCILIATION FAILURE)To: T K Bruce
103 3rd P O Box 355
Hermosa, SD 57744From: Minneapolis Area Office
Equal Employment Opportunity Commission
330 S 2nd Avenue, Suite 720
Minneapolis, MN 55401On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
444-2016-01249	Denae E. Schuldt, Investigator	(612) 334-4007

TO THE PERSON AGGRIEVED:

This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

- NOTICE OF SUIT RIGHTS -

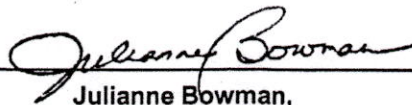
(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission


Julianne Bowman,
District Director
 7/17/17
 (Date Mailed)

Enclosures(s)

 CC: Respondent's Representative:
 Jerry D. Johnson
 Jerry Johnson Law Office
 909 St. Joseph St., Suite 800
 Rapid City, SD 57701

 Charging Party's Representative:
 Courtney A. Bowie
 Legal Director
 American Civil Liberties Union of South Dakota
 PO Box 1170
 Sioux Falls, SD 57101
EXHIBIT

tabbies

B

Enclosure with EEOC
Form 161-A (11/16)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

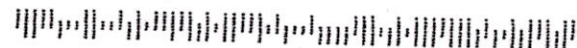
MINNEAPOLIS AREA OFFICE
AL EMPLOYMENT OPPORTUNITY COMMISSION
330 SOUTH SECOND AVENUE, SUITE 720
MINNEAPOLIS, MN 55401-2224

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300



T.K. Bruce
103 3rd P.O. Box 355
Hermosa, SD 57744

57744-035555





2301 W. Russell Street | Sioux Falls, SD 57104

5/9/2016

RE: ADMINISTRATIVE NON-CERTIFICATION

T K Bruce

Hermosa, SD 57744

Member ID: [REDACTED]

Authorization Number: O160504022

This letter is in response to the medical services request received by Health Management Partners (HMP), the managed care review company contracted by your South Dakota State Employee Health Plan.

Following review of the request, HMP is issuing an Administrative Non-Certification. While it may be medically necessary, your South Dakota State Employee Health Plan specifically excludes coverage for Services or drugs related to gender transformations. . This letter is provided to inform you of the determination of administrative non-certification of services due to exclusions in the Plan Document 56. This determination does not address the medical necessity of service.

If you are not satisfied with this review we direct you to either your Plan Document page 111 or to your Plan Administrator for your appeal rights. Please include a copy of this letter with any correspondence.

For verification of payment and benefits please contact DakotaCare at 800-831-0785.

Date of Request: 5/4/2016

Approval Period: From 6/1/2016 through 6/1/2016

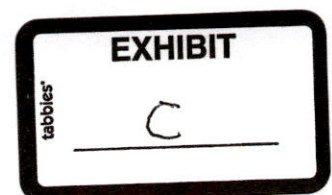
Service: Outpatient Services: Surgical

Requesting Provider: Mary Snyder

Servicing Provider: Plastic Surgical Center of Rapid City Prof LLC

Qty Req'd	Qty Approved	Code	Description	Determination
2	0	19300	MASTECTOMY GYNECOMASTIA	

Sincerely,



Jeff Luther, MD

Medical Director, HMP

1.866.330.9886

Hours of Operation: M-Th 8AM-7PM CST and F 8AM-5PM CST

Cc:

Mary Snyder (605) 343-7208

Plastic Surgical Center of Rapid City Prof LLC (605) 343-6714

SOUTH DAKOTA
**state employee
benefits program**
learn. act. thrive.

South Dakota State Employee Benefits Program
Bureau of Human Resources
500 E. Capitol Avenue, Capitol Building
Pierre, South Dakota 57501-5070
Phone: 605.773.3148 Fax: 605.773.6840
<http://benefits.sd.gov>

May 26, 2016

Terri Bruce

Hermosa, SD 57744-0311

Re: South Dakota State Employee Health Plan – Your Appeal of Administrative Non-Certification

Dear Terri:

We received your appeal of the denial of your pre-authorization request for health benefits (Mastectomy Gynecomastia) to the South Dakota State Employee Group Health Plan ("Plan") on May 16, 2016. On May 9, 2016 Health Management Partners, the State's managed care review vendor, sent you their notice that your prior authorization request for Mastectomy Gynecomastia was denied as the State Employee Health Plan excludes coverage for services or drugs related to gender transformation.

The Summary Plan Description (SPD) for the State of South Dakota Employee Health Plan ("SDSEHP") states that services that are not Medically Necessary will not be covered by the Plan (copy attached, see page 45). Further, pre-authorization by Health Management Partners ("HMP") does not guarantee coverage under the Plan. The requested services must still fall within Plan provisions and the definition of covered services. In this instance the pre-authorization you requested is for a benefit the SDSEHP excludes from coverage: services or drugs related to gender transformation. Please see page 56, item ww of the SPD.

Since the requested benefit is excluded from coverage by the Plan as stated above, your appeal of the prior authorization denial by HMP is denied.

You have the right to a second level appeal, pursuant to the Bureau of Human Resources Administrative Rule 55:08:06:03. Second level appeals or external reviews are done by an Independent Review Organization ("IRO") and their process is overseen by the Division of Insurance.

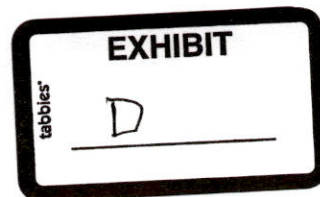
You may find the forms for External Review at www.benefits.sd.gov under Forms and Documents. The form would need to be completed and sent to the Division of Insurance within four months of the date of this denial.

Sincerely,



Tom Steckel
Director of Benefits

cc/attch.



- (b) Charges above the Plan Maximum Allowable Charges (MAC) or Usual, Customary, and Reasonable (UCR) charges. Member is responsible for paying the charges above the MAC or UCR;
- (c) Charges for services not covered by the Plan;
- (d) Penalties for not obtaining a second opinion when required;
- (e) Penalties Incurred when Pre-authorization is not arranged when required; and
- (f) Prescription drug Copayments. Prescription drug Copayments for the \$750 Deductible Plan and \$1,250 Deductible Plan apply to separate \$1,000 per person or \$2,500 for family of three or more per Plan Year drug Out-of-Pocket maximum.

NOTE: The State reserves the right to regulate the choice of provider, services, or supplies based on variable criteria that can include cost savings or service excellence. The member may choose a provider, service, or supply other than one approved by the State, but the member will be responsible for any cost differences. The Plan will only pay the amount they would have paid for the approved provider, service, or supply. The member is responsible for all remaining charges. These additional amounts will not apply to the annual medical Out-of-Pocket Maximum.

OBTAINING HEALTH SERVICES

DAKOTACARE providers will be the primary source of medical care for Members. If health services are received from non-DAKOTACARE providers, benefits may be limited.

DAKOTACARE providers may prescribe, order, or recommend the services of, or refer a Member to a non-DAKOTACARE provider; however, this does not make such services eligible for reimbursement under the terms of this Plan. To be reimbursed, services must be covered by this Plan, must be provided while the Member is enrolled in the Plan, and must be Medically Necessary.

MEDICALLY NECESSARY TREATMENT

The State reserves the right to determine if a service or supply is Medically Necessary. Many services will be reviewed for appropriateness and medical necessity before the services are rendered, through the Pre-authorization process. Other services, such as emergency care, emergency transportations, and private duty nursing, may be reviewed for appropriateness and medical necessity after treatment is provided.

Services that are not Medically Necessary will not be covered by the Plan.

Pre-authorization by HMP or DAKOTACARE does not guarantee coverage under the Plan. The services must still fall within Plan provisions and the definition of covered services, and must not exceed Plan maximums. The Member receiving the service must also be eligible for coverage at the time the service is provided.

- (kk) Transportation or lodging, except as provided under ambulance, required second surgical opinion or organ transplant benefits.
- (ll) Religious counseling and marital counseling.
- (mm) Treatment for compulsive gambling.
- (nn) Family group therapy (e.g., parent/child relationships) when the Patient is not present.
- (oo) The use of CPAP's (Continuous Positive Airway Pressure) when used solely to control behavior problems or to resolve behavioral issues.
- (pp) Recreational or educational therapy and other forms of non-medical self-care, unless provided as part of Plan-approved Diabetic or Cardiac Education or rehabilitative care. This includes learning disability therapy and treatment normally provided through other mandated programs.
- (qq) Wigs needed for hair loss resulting from any medical condition.
- (rr) Artificial insemination, invitro fertilization, or treatment or drugs to reverse a sterilization procedure.
- (ss) Treatment or drugs to terminate a Pregnancy unless the mother's health is in danger or the Pregnancy is due to rape.
- (tt) Laetrile use in any form.
- (uu) Biofeedback, massage therapy, and pain management therapy/treatment.
- (vv) Treatment or drugs prescribed in connection with milieu or milieu therapy.
- (ww) Services or drugs related to gender transformations.
- (xx) Charges covered by automobile or homeowners insurance that provides medical coverage while the policy is in effect.
- (yy) Ergonomic or other home or worksite evaluations.
- (zz) Construction, remodeling, or the structural alteration of a residence, vehicle, or workplace to accommodate the access to, mobility in, or use of the residence.
- (aaa) Charges for smoking cessation classes, unless offered or sponsored by the South Dakota State Employee Health Plan.
- (bbb) Charges for missed medical appointments.
- (ccc) The cost of a second procedure/surgery if it can be determined that the procedure must be redone and is necessary because Physician instructions were not followed. The Member is responsible for 100% of the cost of the second procedure, and the cost of the second procedure/surgery does not apply to the annual medical Out-of-Pocket Maximum.
- (ddd) The following charges do not qualify as covered home healthcare charges: